

JOHN YULE

IBLA 85-922

Decided April 14, 1987

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting an application to open lands within a reclamation withdrawal to mineral entry under the Act of April 23, 1932, 43 U.S.C. § 154 (1982). A-9627.

Set aside and remanded.

1. Act of April 23, 1932 -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Lands -- Reclamation Lands: Generally -- Withdrawals and Reservations: Reclamation Withdrawals -- Withdrawals and Reservations: Revocation and Restoration

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1982), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration. However, on appeal, a case may be remanded for further consideration by the appropriate agencies, where it appears warranted by the appellant's allegations concerning valuable minerals and an expressed willingness to accept terms and conditions to protect the Government's interest.

APPEARANCES: John Yule, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

John Yule has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated August 9, 1985, rejecting his application (A-9627) to open to mineral entry the S 1/2 of sec. 4 and the N 1/2 of sec. 9, T. 4 S., R. 11 E., Gila and Salt River Meridian, Arizona. The land was withdrawn from mineral entry by a first-form reclamation withdrawal, dated September 27, 1965, for the proposed Buttes Dam and Reservoir, a feature of the Central Arizona Project. See Public Land Order No. 3835, 30 FR 12642-43 (Oct. 2, 1965).

On July 12, 1976, appellant filed his application in accordance with the Act of April 23, 1932, 43 U.S.C. § 154 (1982), stating that he wished to conduct "a small mining operation." By letter dated November 2, 1976, BLM informed appellant that the Bureau of Reclamation had advised BLM that

the subject lands were within the area of the proposed Buttes Supply Canal, and that opening the land to mineral location and entry at that time would not be in the best interest of the United States. Therefore, BLM stated that appellant's application would be held in abeyance until the Bureau of Reclamation's requirements in the area were determined. Thereafter, BLM requested periodic updates from the Bureau of Reclamation regarding its recommendations concerning the application. Each time, holding the application in abeyance was recommended because of the uncertainty of the project. Finally, however, in an August 2, 1985, memorandum to BLM, the Bureau of Reclamation recommended denying the application. BLM then issued its decision rejecting appellant's application explaining:

The Bureau of Reclamation opposes the opening of the above-described land for administrative reasons. Construction of the Buttes Dam is still under consideration and the area covered by the application may be subject to disturbance if it is constructed. The subject land would be downstream of the proposed dam and may be needed for borrow sites.

It has been concluded that mining operations of the land would interfere with the administration of the Buttes Dam and Reservoir project. Therefore, petition of restoration A-9627 is hereby denied.

In his notice of appeal, appellant states that BLM's decision "is erroneous because I'm only asking for surface mineral rights (down to 150 feet)." Moreover, he states that he is "willing to vacate and reclaim the subject land to Federal standards and will post bond to guarantee it within eight months of written notice. This would not be detrimental to a borrowed [sic] site, but in fact would enhance it as such."

In his statement of reasons, appellant discusses the mineral nature of the subject land, and questions BLM's decision to reject his application on the basis that the land is needed as a borrow site:

Ramdon [sic] grab samples of surface rock show silver content up to 1/2 ounce per ton and 4 percent copper. A detailed surface and sub-surface program would probability [sic] locate higher grade ore bodies. Several tons of ore of gem quality turquoise [sic], chrysocolla, malchite [sic] and azurite, when projected into the third dimension runs into the ten's of tons. No primary copper minerals are found on the surface, which along numerous box work suggest that they have been leached and formed a blanket of high grade ore just below the water table. Unfortunately, I cannot afford to take the risk of a detailed sampling and drilling program until restoration of mineral entry.

The Bureau of Reclamation opposes the subject land because it may be needed as a borrow site for a proposed dam. The site is near the edge of possible borrow sites, and borrow material can be taken from other areas as close or closer. Over burden and waste from any mining operation can be used as borrow material. It does not make economic sense to use a potential

ore deposit as fill for a dam. But if you must, allow me surface mineral [sic] rights (down to 150 feet). I am willing to vacate and reclaim the subject land to Federal standards and will post bond to guarantee it within eight months of written notice.

[1] The authority of the Secretary to open withdrawn lands is conferred by the Act of April 23, 1932, 43 U.S.C. § 154 (1982), which reads, in pertinent part:

Where public lands of the United States have been withdrawn for possible use for construction purposes under the Federal reclamation laws, and are known or believed to be valuable for minerals and would, if not so withdrawn, be subject to location and patent under the general mining laws, the Secretary of the Interior, when in his opinion the rights of the United States will not be prejudiced thereby, may, in his discretion, open the land to location, entry, and patent under the general mining laws, reserving such ways, rights, and easements over or to such lands as may be prescribed by him and as may be deemed necessary or appropriate, including the right to take and remove from such lands construction materials for use in the construction of irrigation works * * *.

In numerous cases, this Board has stated that the authority conferred upon the Secretary by the Act of April 23, 1932, 43 U.S.C. § 154 (1982), is discretionary and is to be exercised only when the rights of the United States will not be prejudiced thereby. E.g., Robert Limbert, 85 IBLA 131 (1985); Joe Ashburn, 66 IBLA 328 (1982). Thus, an application under the Act of April 23, 1932, for restoration of reclamation lands to mineral entry will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent. E.g., Florence Adkisson, 47 IBLA 121 (1980); Edward J. Connolly, Jr., 34 IBLA 233 (1978); George S. Miles, Sr., 7 IBLA 372 (1972).

In the opinion of the Bureau of Reclamation those lands embraced in appellant's application "may be subject to disturbance if [the Buttes Dam] is constructed." The Bureau of Reclamation specifically states that the lands "may be needed as a borrow site." (Memorandum dated August 2, 1985, from Bureau of Reclamation to Arizona State Office). In Florence Adkisson, supra, the Bureau of Reclamation recommended against opening lands to mineral entry for similar reasons. Therein the subject lands were being evaluated for use in a reservoir project, construction of a proposed dam had not begun, and the appellant agreed to relinquish the claims to BLM if and when the land actually became needed for the reservoir project. The Board affirmed BLM's decision to deny the appellant's application, stating: "We are not able to find in the circumstances of this case that the public interest in protection and maintenance of the reservoir project is outweighed by other factors" (47 IBLA at 124).

Similarly, in George S. Miles, Sr., supra, the Bureau of Reclamation recommended that a restoration application be denied because the land "lies within the area designated for the operation, protection and security of

Hoover Dam." The Bureau of Reclamation "stated that mineral development was not in the public interest as it is necessary to maintain a reasonable buffer zone adjacent to Hoover Dam over which the United States retains complete jurisdiction" (7 IBLA at 372-73). Again, the Board affirmed BLM's denial of the application.

The above decisions would seem to dictate that we affirm BLM's rejection of appellant's application. However, a separate line of cases beginning with Surprise Venture Associates, 7 IBLA 44 (1972), indicates that in certain circumstances the Board will direct that the decision to reject be reconsidered. In Surprise Venture, the Bureau of Reclamation recommended against opening certain lands to mineral entry on the basis that studies for the Orme Dam and Reservoir had not progressed to the point where ultimate land requirements could be determined. The Board set aside BLM's rejection of the appellant's application, noting that the Act of April 23, 1932, requires as a condition to restoration, that the lands are known or believed to be valuable for minerals. The appellant's evidence concerning the value of the land for minerals was not conclusive. However, in view of the appellant's arguments that it could remove the minerals before the dam was completed without interfering with any Government project, and that it would operate as directed for the protection of the interest of the United States, the Board remanded the case to BLM with instructions that "it cause a mineral examination to be made of the lands to determine whether the alleged mineral deposits are of sufficient value to make mining operations profitable" (7 IBLA at 46-47).

In subsequent cases, the Board has set aside BLM's rejection of a restoration application, and remanded for a mineral examination by BLM and further consideration by the Bureau of Reclamation, where the applicant (1) alleges the lands contain valuable minerals and (2) appears willing to accept necessary restrictions on his operation and to conduct the mineral operations in a way that will not harm the interests of the United States. This approach was followed in Robert Limbert, *supra*; Joe Ashburn, *supra*; and G. W. Daily, 34 IBLA 176 (1978).

The information submitted by appellant is inconclusive whether the subject land is valuable for minerals. Appellant states that he cannot afford to "take the risk of a detailed sampling and drilling program until restoration of mineral entry" (Statement of Reasons). ^{1/} Appellant expresses a willingness to conduct any operation so as to protect the interests of the United States.

The sole reason for rejection of appellant's application is that the project may go forward and, if it does, the lands in question may be necessary for borrow sites. Although appellant has requested the opening of approximately 320 acres, he has not indicated with specificity the area in

^{1/} We note that the Geological Survey, in a memorandum to BLM, dated Sept. 15, 1976, stated that its "information indicates that the land is without value for any of the minerals covered by the mineral leasing laws." However, that memorandum also states that "[l]ocatable minerals are not known or reported in the area, but this information should not be relied on solely as a determination that the land is nonmineral in character."

which he might locate his mining claim or claims. He does allege, however, that borrow material is more readily available in areas closer to the proposed dam.

We believe that the best approach in this case is to set aside BLM's decision and to remand the matter to BLM for a mineral examination, if it is needed, to determine whether the lands are known or believed to be valuable for minerals, 2/ and for further consideration by the Bureau of Reclamation of whether and how the rights of the United States may be protected by reservation of rights in the document opening the land to entry. 3/ See Robert Limbert, 85 IBLA at 133-34; Red Mountain Mining Co., 85 IBLA 23 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Anita Vogt
Administrative Judge, Alternate Member.

2/ BLM may wish to consult with appellant concerning the situs of proposed mining operations.

3/ If, in fact, the Bureau of Reclamation is concerned about the preservation of borrow sites, 43 U.S.C. § 154 (1982) clearly contemplates that such sites could be reserved in an opening order.

